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>>> "Cragwall, J." <jcragwall@wnj.com> 6/1/2005 2:06 PM >>>

On behalf of Warner Norcross & Judd LLP, I am writing to recommend deletion of the "confirmed in writing" requirement in proposed Rules 1.7(d), 1.9(d), 1.10(d), 1.11(a), 1.12 and 1.18(d) of the Michigan Rules of Professional Conduct (MRPC). The requirement for a written confirmation from clients may be an appropriate "best practice" in many circumstances, but we consider it unnecessary and impractical to make this mandatory under the ethical rules. We urge the Court to adopt the reasoning of the Chicago Bar Association and the Illinois State Bar Association Joint CBA/ISBA Committee on Ethics 2000. The Final Report of the Joint Committee, dated October 17, 2003, concluded that it is inappropriate to have a "confirmed in writing" requirement in the rules:

"The model rule requires waivers of conflicts (i.e., client consents) to be in writing. That would be a significant change from the current Illinois rule. Although written conflict waivers are clearly desirable in many situations, requiring written consent in every situation as a matter of discipline is both unnecessary and inappropriate. Often, the conflict issues are clear, the affected clients understand the issues, and the matter is uncomplicated. The need for a consent may arise unexpectedly and without notice in the midst of a transaction or other matter. In such cases, requiring a writing merely adds unnecessary delay and expense, and elevates technicality over the substantive question whether consent was given. Moreover, subjecting a lawyer to potential discipline, disqualification, and malpractice liability for want of a writing--when it may be entirely clear that the consent was in fact given--is not reasonable. Accordingly, the Committee recommends that the rule and comments be revised to eliminate the requirement that conflict waivers be in writing." (Final Report, Summary of Action, Rule 1.7, page 16).

We ask the Court to give further consideration to this matter, but not so as to delay the adoption of other proposed rule changes.

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